

RECEIVED

DOCKET FILE COPY ORIGINAL

JAN 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Rosenman & Colin LLP
805 15th Street NW
Washington DC 20005-2212

Telephone: (202) 216-4600
Facsimile: (202) 216-4700
web site: www.rosenman.com

January 23, 2001

Via Hand Delivery

Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

CLIENT NO. 43209-84670

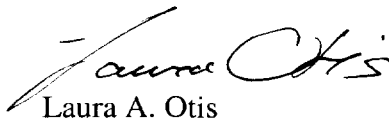
Re: Petition for Rulemaking by
IDAHO BROADCASTING CONSORTIUM, INC. to amend the
FM Table of Allotments, Section 73.202(b)
(Arapahoe and Lost Cabin, Wyoming)

Dear Ms. Salas:

Transmitted herewith, on behalf of IDAHO BROADCASTING CONSORTIUM, INC., is an original and four copies of its PETITION FOR RULEMAKING to amend the FM Table of Allotments to allot Channel 256C to Arapahoe, Wyoming, as that community's first local aural service, and modify the construction permit BPH-19971021 for KSXZ-FM, Lost Cabin, Wyoming (Facility ID 89088) accordingly.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Very truly yours,


Laura A. Otis

Attachment

cc (w/attachment): Mr. Frederic W. Constant
Mr. Melvyn Lieberman

No. of Copies rec'd 04
List ABCDE
MMB

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., 20554

JAN 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. _____
FM Table of Allotments,) RM No. _____
(Arapaho and Lost Cabin, Wyoming))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULEMAKING

IDAHO BROADCASTING CONSORTIUM, INC. ("IBC"), by its attorney and pursuant to Section 1.1420(i) of the Commission's Rules, hereby petitions the Commission to institute a rulemaking proceeding for the purpose of amending the FM Table of Allotments (Section 73.202(b) of the Commission's Rules) to allot Channel 256C to Arapahoe, Wyoming, as that community's first local aural service, and to modify the construction permit BPH-19971021MA (Facility ID 89088) for KSXZ-FM, Lost Cabin, Wyoming accordingly, pursuant to *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094.

As demonstrated below, grant of this re-allotment proposal would be fully consistent with the Commission's FM allotment priorities, and Section 307(b) of the Communications Act, which requires the Commission to provide a "fair, efficient and equitable distribution of radio service" to the various states and communities within them. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

The proposed re-allotment would be as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Lost Cabin, Wyoming	256C	None
Arapahoe, Wyoming	None	256C

In support hereof, IBC respectfully submits the following:

1. Arapahoe is located within the Wind River Reservation in the west-central part of Wyoming. It has an estimated population of 393, and a land area of 19.125 square kilometers. *See Wyoming Resource Guide*, <http://www.pe.net/~rksnow/wycountyarapahoe.htm> (available on 1/10/2001). Although Arapahoe is not listed in U.S. census reports, it is identified in the Rand McNally Road Atlas (2000) and other maps of Wyoming. As discussed further below, Arapahoe is in every regard a “community” for allotment purposes.

2. Arapahoe, for example, has its own post office (15 Left Hand Ditch Road, Arapahoe, WY) and zip code (82510). It also has a primary and middle school (444 Little Wind River Bottom Road, Arapahoe, WY 82510), a Head Start program, and numerous municipal, commercial, social organizations serving the special needs and interests of its residents, including:

- (a) The Arapahoe Health Center, 14 Great Plains Road, Arapahoe, WY 82510;
- (b) Black Coal Senior Citizens Center, 4 Great Plains Road, Arapahoe, WY 82510;
- (c) American Indian Justice Center, Turtle Shelter (a domestic violence shelter), 4 Great Plains Road, Arapahoe, WY 82510;
- (d) Boys & Girls Club, 11 Great Plains Road, Arapahoe, WY 82510.
- (e) Arapahoe Social Service Center, 9 Great Plains Road, Arapahoe, WY 82510.
- (f) Welcome House (providing 24-hour child-care services), 340 Great Plains Housing, Arapahoe, WY 82510
- (g) 789 Bingo Truck Stop / Store, 10369 Highway 789, Arapahoe, WY 82510.
- (h) Little Wind Feed Lot, 218 Little Wind River Bottom, Arapahoe, WY 82510.
- (i) Flying Phoenix Fireworks, 92 Chair Lane, Arapahoe, WY 82510.

3. With regard to its local government, Arapahoe is governed by leaders of the Northern Arapaho Tribe, a federally recognized Nation.

4. These facts demonstrate that Arapahoe is a *bona fide* community for allotment purposes, and FCC case law strongly supports this conclusion. For example, in *Semora, North Carolina*, 5 FCC Rcd 934 (1990), the Commission concluded that Semora, North Carolina was a community even though Semora was not listed in the census reports, had an estimated population of only 150, had no local government, and provided no municipal services except for its volunteer fire department.

5. In *Kenansville, Florida*, 5 FCC Rcd 2663 (1990), the Commission allotted a television station to Kenansville, Florida, although Kenansville, like Arapahoe, was not incorporated or listed in the census reports, and received many services from the county, rather than the community itself. The Commission emphasized that it “does not require a municipality to provide every municipal service in order to merit a finding of community status.” *Id.* at 2664.

6. The Commission’s broad interpretation of what constitutes a “community” for allotment purposes was further demonstrated in *Cal-Nev-Ari, Boulder City and Las Vegas, Nevada*, 14 FCC Rcd 17153 (1999). In this case, the Commission allotted a channel to Cal-Nev-Ari, a locality of 350 persons which was described as “a double row of mobile homes with an airstrip between them.” The locality had no churches, schools, social events or social clubs identified with Cal-Nev-Ari, yet the Commission found “strong evidence of a community.” *Id.* at 17155. *See also Drummond and Victor, Montana*, DA 00-917 (rel. April 25, 2000) (allotting channels to Drummond and Victor, with populations of 264 and 500 persons, respectively); *Bayfield, Colorado and Teec Nos Pos, Arizona*, DA 00-920 (rel. April 25, 2000) (allotting

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

Idaho Broadcasting Consortium, Inc. - Arapahoe, WY

E N G I N E E R I N G S T A T E M E N T

This Engineering Study is furnished in support of a Petition for Rulemaking looking toward the assignment of FM channel 256 (99.1 MHz) as a Class C re-allocation to Arapahoe, Wyoming as that community's first aural service.

The assignment of channel 256C to Arapahoe may be accomplished by moving channel 256C assigned to Idaho Broadcasting Consortium (the instant petitioner) under BPH-97102~~MD~~ at Lost Cabin, Wyoming to Arapahoe, Wyoming. It is intention of the Pettioner to move the Lost Cabin, Wyoming construction permit (KSXZ-FM) to Arapahoe, Wyoming.

The move of channel 256C from Lost Cabin to Arapahoe will not eliminate the service to Lost Cabin presently available from the current KSXZ-FM transmitter site.

In support whereof, the following additional exhibit is submitted

Figure 1: An FM channel spacing study showing the channel may be accommodated at the town of Arapahoe, Wyoming, reference coordinates, NL 42° 58' 13" WL 108° 28' 30". This study was conducted under 47 C.F.R. Section §73.207.

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

Idaho Broadcasting Consortium, Inc. - Arapahoe, WY

Figure 1

FM CHANNEL SPACING STUDY

Job title: ARAPAHOE, WY
Channel: 256C

Latitude: 42 58 13
Longitude: 108 28 30

CH	Call	Record	City	ST	Status	Bear.	Dist.	Reqd. Dist.	Result
257A	KKTY-FM	22923	DOUGLAS	WY	LIC	95.4	242.3	165.0	
259C		23381			ADD	142.0	202.4	105.0	
259C		23382			ADD	130.3	168.0	105.0	
256C ¹	KSXZ	23780	LOST CABIN	WY	CP	36.6	64.9	290.0	-225.1
259C1		24264			ADD	207.3	180.1	105.0	
257A	KMXE	24289	RED LODGE	MT	LIC	344.7	256.7	165.0	
257A		24290			DEL	344.8	256.4	165.0	
257C1	KNYN	24291	FORT BRIDGER	WY	ADD	344.7	256.7	209.0	
256C1		24527			CP	228.9	269.6	270.0	-.4
256C1		24548			ADD	228.9	269.6	270.0	-.4
256C1		24549			ADD	228.9	269.6	270.0	-.4
256C1		24550			ADD	228.9	269.6	270.0	-.4
259A		24557			ADD	250.9	142.3	95.0	
259C1		24558			ADD	250.9	142.3	105.0	
256C1	KUPI-FM	24966	IDAHO FALLS	ID	LIC	284.1	284.1	270.0	14.1

- Under this instant proposal, channel 256C, assigned to Lost Cabin, moves to Arapahoe, Wyoming.

***** End of channel 256 study *****

LIEBERMAN & WALISKO
CONSULTING TELECOMMUNICATIONS ENGINEERS
11403 GILSAN ST.
SILVER SPRING, MD 20902

DECLARATION

MELVYN LIEBERMAN, declares and certifies as follows:

That he is associated with the firm of **LIEBERMAN & WALISKO, Inc.**;

That this firm has been retained by **Idaho Broadcasting Consortium, Inc.** to prepare this Engineering Statement;

That his qualifications are a matter of record with the Federal Communications Commission;

That he has either prepared or directly supervised the preparation of all technical material contained in this engineering statement and that the facts stated in this report are true of his knowledge and belief except as to such statements as are herein stated to be on information and belief and as to such statements, he believes them to be true.

12/13/00
Date

Melvyn Lieberman
Melvyn Lieberman